

**REMARKS/ARGUMENTS**

Applicant would like to thank the Examiner for the careful consideration given the present application. The application has been carefully reviewed in light of the Office action, and amended as necessary to more clearly and particularly describe the subject matter that Applicant regards as the invention.

Applicant has amended claims 1 and 13.

The Examiner objected to the abstract of the disclosure for being in excess of a single paragraph. Applicant has amended the abstract and included herewith. Withdrawal of the objection is requested.

Claims 1, 5-9, 12, 13 and 16-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Bantz et al. (U.S. Patent No. 5,507,035), hereinafter “Bantz”. Independent claims 1 and 13 have been amended to include limitations not disclosed by Bantz. Specifically, Bantz fails to disclose that the antenna “...is switched to a different antenna each time the packet is received in the associated station.” Claim 9 contains a similar limitation, and stands rejected by the Examiner based on the allegation that “...each time a packet is received by the mobile station it has a chance of being received on a different antenna based on the received signal energy.” Applicant respectfully asserts that it is also equally as conceivable that the same antenna could be selected in consecutive operations based on the received signal energy. Since neither assertion is disclosed in Bantz, neither can be accepted as disclosed by the prior art.

Additionally, a claim limitation can not be inherently present simply because of the mere possibility that it could result from optimization of the prior art when such optimization is not

taught. The fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic. *In re Rijckaert*, 9 F.3d 1531, 1534, 28 USPQ2d 1955, 1957 (Fed. Cir. 1993) (reversed rejection because inherency was based on what would result due to optimization of conditions, not what was necessarily present in the prior art); *In re Oelrich*, 666 F.2d 578, 581-82, 212 USPQ 323, 326 (CCPA 1981). To establish inherency, the extrinsic evidence “must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient.” *In re Robertson*, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999) (citations omitted). M.P.E.P. §2112, IV.

Bantz fails to disclose that the antenna “...is switched to a different antenna each time the packet is received in the associated station.” Accordingly, as Bantz fails to disclose every limitation of claims 1, 9 and 13, Bantz fails to anticipate claims 1, 9 and 13. Therefore, Applicant respectfully requests that the rejection of claims 1, 9 and 13 be withdrawn.

Claims 5-8 depend either directly or indirectly on claim 1, and thus are patentable for at least the same reasons as the parent claim.

Claims 12 and 16 depend directly on claim 9, and thus are patentable for at least the same reasons as the parent claim.

Claim 17 depends directly on claim 13, and thus is patentable for at least the same reasons as the parent claim.

Claims 2 and 10 stand rejected under 35 U.S.C. 103 (a) over Bantz in view of Hosur et al. (U.S. No. 6,977,910), hereinafter “Hosur”. The asserted combination of Bantz and Hosur, independently or in combination, does not teach or suggest all features of the claimed invention. Bantz does not disclose a limitation of an antenna switching to a different antenna “each time the packet is received”. Nor does Hosur disclose that an antenna would switch to a different antenna each time a packet is received. Therefore, even if Bantz were combined with Hosur, every limitation of amended claim 1 would not be taught or suggested by the resulting combination. Thus, claims 2 and 10 are patentable for at least the same reasons as the parent claim.

Claims 3 and 14 stand rejected under 35 U.S.C. 103 (a) over Bantz in view of Crawford (U.S. No. 2002/0164968), hereinafter “Crawford”. The asserted combination of Bantz and Crawford, independently or in combination, does not teach or suggest all features of the claimed invention. Bantz does not disclose a limitation of an antenna switching to a different antenna “each time the packet is received”. Nor does Crawford disclose that an antenna would switch to a different antenna each time a packet is received. Therefore, even if Bantz were combined with Crawford, every limitation of amended claims 1 and 13 would not be taught or suggested by the resulting combination. Thus, claims 3 and 14 are patentable for at least the same reasons as their parent claims.

Claims 4 and 11 stand rejected under 35 U.S.C. 103 (a) over Bantz in view of Wang et al. (U.S. No. 2002/0003774), hereinafter “Wang”, in view of Subrahmanya et al. (U.S. No. 2003/0128678), hereinafter “Subrahmanya”. The asserted combination of Bantz, Wang and

Subrahmanya, independently or in combination, does not teach or suggest all features of the claimed invention. Bantz does not disclose a limitation of an antenna switching to a different antenna “each time the packet is received”. Nor does Wang or Subrahmanya disclose that an antenna would switch to a different antenna each time a packet is received. Therefore, even if Bantz were combined with Wang and Subrahmanya, every limitation of amended claims 1 and 9 would not be taught or suggested by the resulting combination. Thus, claims 4 and 11 are patentable for at least the same reasons as their parent claims.

Claim 15 stands rejected under 35 U.S.C. 103 (a) over Bantz in view of Wang. The asserted combination of Bantz and Wang, independently or in combination, does not teach or suggest all features of the claimed invention. Bantz does not disclose a limitation of an antenna switching to a different antenna “each time the packet is received”. Nor does Wang disclose that an antenna would switch to a different antenna each time a packet is received. Therefore, even if Bantz were combined with Wang, every limitation of claim 13 would not be taught or suggested by the resulting combination. Thus, claim 15 is patentable for at least the same reason as the parent claim.

In consideration of the foregoing analysis, it is respectfully submitted that the present application is in a condition for allowance and notice to that effect is hereby requested. If it is determined that the application is not in a condition for allowance, the examiner is invited to initiate a telephone interview with the undersigned attorney to expedite prosecution of the present application.

Appl. No. 10/599,857  
Amdt. Dated: February 16, 2009  
Reply to Office action of November 17, 2008

If there are any additional fees resulting from this communication, please charge same to our Deposit Account No. 16-0820, our Order No.: NGB-41345.

Respectfully submitted,

PEARNE & GORDON LLP

By: /michaelwgarvey/  
Michael W. Garvey, Reg. No. 35,878

1801 East 9th Street  
Suite 1200  
Cleveland, Ohio 44114-3108  
(216) 579-1700

Date: February 16, 2009